

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-00149

COUNSEL: NONE)

01 1999

HEARING: NO

The applicant requests that he receive a permanent disability retirement from the Air Force rather than a disability discharge with severance pay. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). Applicant's response to the advisory opinions is at Exhibit E.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been adequately rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record. Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. David C. Van Gasbeck, Ms. Patricia D. Vestal, and Mr. Edward H. Parker considered this application on 5 November 1998 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


DAVID C. VAN GASBECK
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. AFBCMR Ltr Forwarding Advisory Opinions
- E. Applicant's Response

25 February 1998
98-00749

MEMORANDUM FOR AFBCMR

FROM: BCMR Medical Consultant
1535 Command Drive, EE Wing, 3rd Floor
Andrews AFB MD 20762-7002

SUBJECT: Application for Correction of Military Records


Applicant's entire case file has been reviewed and is forwarded with the following findings, conclusions and recommendations.

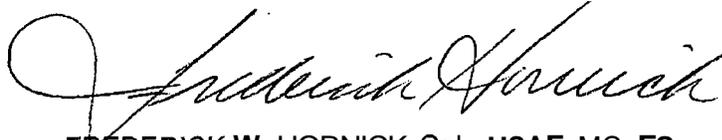
REQUESTED ACTION: The applicant was removed from the Temporary Disability Retired List (TDRL) and discharged with severance pay on 2 Jan 97 . He now applies requesting that his status be changed to medical retirement with 30 percent disability.

FACTS: The records indicate that the applicant met a Medical Evaluation Board (MEB) on 26 July 1994 and was referred to the Informal Physical Evaluation board on 5 Aug 94. He was assigned to the TDRL with 70% disability for a major depressive disorder on 4 October 1994. In July 1996 he underwent TDRL reevaluation and was recommended by the Informal Physical Evaluation Board (IPEB) for permanent disability retirement at the same 70% level, a recommendation he non-concurred with, and he was subsequently directed to a Formal PEB hearing which convened on 37 Oct 96. This Board found him unfit for continued military service, non-compliant in overcoming alcohol and marijuana dependence, and felt his social and industrial limitations were best described as "mild". At the time of his hearing, the applicant was holding down a full-time job and was felt capable of continuing employment if he were to overcome his drug and alcohol problems. It was recommended he be separated with severance pay and 10% disability, a decision he contested but which was upheld by the Secretary of the Air Force Personnel Council (SAFPC) in a hearing dated 6 Dec 96. He believes the record is in error because the military evaluated his disability at 10% and the VA has evaluated his disability at 30%. There is no evidence to support a higher rating at the time of permanent disposition. His case was properly evaluated, appropriately rated and received full consideration under the provisions of AFI 36-3212. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law.

DISCUSSION: Once an individual has been declared unfit, the Service Secretaries are required by law to rate the condition based upon the degree of disability at the time of permanent disposition and not upon the possibility of future events. The FPEB and the SAFPC correctly deducted from the applicant's compensation for his non-compliance in overcoming drug and alcohol dependence, in spite of several hospitalizations for rehabilitation, factors felt to be strong contributors to his ongoing mental health problems. No change in military disability ratings can occur after permanent disposition under the rules of the military disability system, even though the condition may become better or worse. However, Title 38, USC authorizes the VA to increase or decrease the VA compensation ratings based upon the individual's condition at the time of future evaluations.

9800149

RECOMMENDATION: The Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

A handwritten signature in cursive script, reading "Frederick W. Hornick". The signature is written in black ink and is positioned above the printed name and title.

FREDERICK W. HORNICK, Col., USAF, MC, FS
Chief Medical Consultant, AFBCMR
Medical Advisor SAF Personnel Council

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE, TEXAS

9 Apr 98

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPD
550 C Street West Ste 06
Randolph AFB TX 78150-4708

SUBJECT **Application for Correction of Military Records** [REDACTED]
[REDACTED]

REQUESTED ACTION: Applicant requests that his disability discharge on 2 Jan 97 be set aside and he receive a disability retirement.

FACTS: Applicant was involuntarily relieved from active duty on 4 Oct 94 for physical disability under the provisions of **AFI 36-3212**, and placed on the Temporary Disability Retired List (TDRL). Member completed four years, four months, and twenty-five days of active **duty**. He remained on the TDRL until he was Discharged With Severance Pay (DWSP) with a 10 percent disability rating on 2 Jan 97.

DISCUSSION: The purpose of the military disability system is to maintain a fit and vital force by separating members who are unable to perform the duties of their grade, office, rank or rating. Members who are separated or retired for reason of physical disability may be eligible, if otherwise qualified, for certain disability compensations. Eligibility for disability processing is established by a Medical Evaluation Board (MEB) when that board finds that the member may not be qualified for continued **military** service. The decision to conduct an **MEB** is made by the medical treatment facility providing care to the member.

An MEB was convened at Eglin AFB, Florida on 26 Jul 94 and referred to the Informal Physical Evaluation Board (IPEB). On 5 Aug 94, the IPEB found the member unfit for continued military service for a diagnosis of major depressive episode, without psychotic features associated with panic disorder, mild agoraphobia and alcohol dependence, with severe social and industrial impairment; the Board recommended he be placed on the TDRL with a 70 percent disability rating. Applicant agreed with the findings and recommendations of the IPEB and officials within the Office of the Secretary of the Air Force directed that he be placed on the TDRL effective 5 Oct 94, with a 70 percent disability rating.

While on the TDRL, member received a periodic physical evaluation at Scott AFB, Illinois. Based on his updated medical evaluation, the IPEB found his condition had stabilized somewhat, found him unfit for continued military service, and recommended he be permanently retired with a disability rating of 70 percent. On 24 Aug 96, the member non-concurred with the findings of the IPEB, waived his rights to a formal hearing, and submitted a written rebuttal to the Secretary of the Air Force Personnel Council (SAFPC).

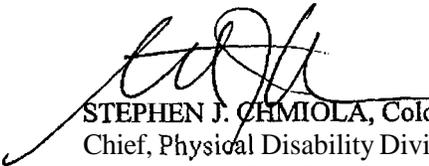
The member's case file was forwarded to the SAFPC, which upon review determined that a full and fair hearing was appropriate and directed the member appear before a **Formal PEB (FPEB)**. On

31 Oct 96, with the assistance of legal counsel, the member presented his case before the FPEB. This board recommended that he be discharged with a 10 percent disability rating. The member non-concurred and submitted a rebuttal to SAFFPC. Upon thorough review of the entire case file, to include an audio transcript of the FPEB hearing and the applicant's written rebuttal, SAFFPC concurred with the findings of the Formal PEB and recommended the applicant's discharge with severance pay and a 10 percent disability rating. On 6 Dec 96, officials within the Office of the Secretary of the Air Force directed that the applicant be removed from the TDRL and he be discharged with a 10 percent compensable disability rating under the provisions of 10 USC 1203. Member was discharged on 2 Jan 97.

It should be noted that the disability evaluation process is intended to be an iterative one, with each board of senior officers considering not only the documentation/evidence available to the prior board(s) but also new information not previously available. Findings and recommendations are made based on the preponderance of the evidence available to that board. As such, it should not be considered unusual when a final board decision differs from a prior board, as new facts justify a different outcome.

A thorough review of the AFBCMR file revealed no errors or irregularities in the processing of the applicant's case within the disability evaluation system. He was appropriately found unfit for continued military service and properly rated under federal disability rating guidelines. The member was afforded all rights to which he was entitled under disability law and departmental policy. The medical aspects of this case are fully explained by Medical Consultant; we fully agree with his advisory.

RECOMMENDATION. We recommend denial of the applicant's request. The applicant has not submitted any material or documentation to show he was inappropriately rated or processed under the military disability evaluation system. Disability retirement of this member would be in violation of 10 USC 1201.


STEPHEN J. CHMIOLA, Colonel, USAF
Chief, Physical Disability Division
Directorate of Pers Prog Management